IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-864

CITY OF LAFAYETTE, LOUISIANA AND
CITY OF PLAQUEMINE, LOUISIANA, *Petitioners,*

v.

LOUISIANA POWER & LIGHT COMPANY, *Respondent.*

REPLY BRIEF FOR THE PETITIONERS

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ARGUMENT

I. This Court's Own Decisions Support the Cities' Contention That the Federal Antitrust Laws Are Inapplicable To Municipalities

Goldfarb v. *Virginia State Bar*, 412 U.S. 773 (1975), held that the federal antitrust laws applied to the anticompetitive conduct of an association of private practicing lawyers. Although the Court in *Goldfarb* considered the applicability of the *Parker* v. *Brown*[1] state action doctrine, it determined that the actions of the Virginia State Bar were neither the actions of the state itself nor compelled by the state. In the recent decision in *Bates* v. *State Bar of Arizona*, 97 S.Ct. 2691 (1977), the Court affirmed the holding of *Parker* v. *Brown* that the direct actions of a state agency are outside the

[1] 317 U.S. 341 (1943).

scope of the federal antitrust laws. These cases, and statements in the various opinions in *Cantor* v. *The Detroit Edison Company*, 428 U.S. 579 (1976),[2] confirm that the court below erred in its reading of *Goldfarb* and its ruling that the direct acts of state political subdivisions are subject to the antitrust laws.

The Brief for Respondent filed by Louisiana Power & Light Company ("LP&L"), in an effort to find support for the Fifth Circuit's reading of *Goldfarb*, characterizes the Virginia State Bar's actions as those of a state agency, but that simply does not comport with the analysis in *Goldfarb* or the subsequent decisions of this Court.[3] The City of Lafayette and the City of Plaquemine ("Cities") submit that the Court's opinions themselves provide ample evidence that the *Parker* v. *Brown* state action doctrine has not been altered in cases involving the actions of wholly governmental state entities.[4]

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[2] 428 U.S. at 591; Burger, C.J., concurring, *Id.* at 603-04; Blackmun, J., concurring, *Id.* at 613-14 n. 5; Stewart, J., dissenting, *Id.* at 623, 637-39.

[3] In addition to the cases decided by this Court, LP&L seeks support for its interpretation of *Goldfarb* in recent cases decided by the circuit courts including *Kurek* v. *Pleasure Driveway and Park District of Peoria, Illinois*, 557 F. 2d 580 (7th Cir. 1977). The *Kurek* decision, which held that an Illinois park district and its officials were subject to suit under the Sherman Act, rests on the same infirm reading of *Goldfarb* which led the Fifth Circuit here and the Third Circuit in *Duke & Co.* v. *Foerster*, 521 F. 2d 1277 (3rd Cir. 1975), to erroneous interpretations of the *Parker* v. *Brown* doctrine. *See also* the recent decision of a divided Fourth Circuit in *City of Fairfax* v. *Fairfax Hospital Association*, [1977] 829 Antitrust & Trade Reg. Rep. (BNA) E-1. (No. 76-1775, 4th Cir. Aug. 22, 1977).

[4] Contrary to the government's assertion (Brief of the United States as Amicus Curiae at p. 6), *Parker* v. *Brown* did not differentiate in terms of the applicability of the antitrust laws between a regulatory program and state participtaion in a private conspiracy. Rather, the Court in *Parker* (317 U.S. at 352) was describing a variety of circumstances where state participation or action would not necessarily insulate private parties from the reach of the Sherman Act. Moreover, the Court in that very discussion by referring to "the state or its municipality" *equated* a municipality with a state. Under the government's construction of *Parker* v. *Brown* the state itself would be liable under the antitrust laws if it were engaged in "proprietary" activity that affected interstate commerce, a result which flies in the face of the *Parker* v. *Brown* ruling.

LP&L's argument on the *Parker* v. *Brown* doctrine's application to this case is most notable for what it fails to include. It contains no rebuttal to *Parker's* conclusions as to congressional purpose and provides no authority to detract from this Court's position in *Parker* v. *Brown* that Congress did not intend the federal antitrust laws to apply to actions of the states or their political subdivisions.[5] The Respondent's approach is an attempt to limit *Parker's* holding to the narrowest class of cases involving state legislative commands. But, neither the antitrust statutes nor their legislative histories provide any foundation for such a construction of antitrust coverage. As a general matter legitimate state action cannot be so arbitrarily restricted to the legislative branch. *See, Lombard* v. *Louisiana*, 373 U.S. 267, 273 (1963). In particular, the Court's application of the *Parker* v. *Brown* doctrine in *Bates* v. *State Bar of Arizona, supra*, directly contradicts any

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[5] By rhetorically referring to immunities and the principle that presumptions exist against implicit exemptions to the antitrust laws, LP&L and the amici misstate the issue before this Court. As is abundantly clear from *Parker* v. *Brown*, the issue is the applicability, or not, of the antitrust laws to governmental bodies and not a matter of the exemption or immunization of a party which the Congress otherwise clearly intended to be subject to such laws.

assertion that state legislatures are the only governmental bodies whose acts or directives provide protection from the antitrust laws.

LP&L, while admitting that the federal antitrust laws are inapplicable to one segment of state government, would have this Court rule that the Congress intended a different result for other branches or subdivisions and would urge that Congress intended municipal treasuries to be subject to treble damage liability in suits brought by private corporations. The Cities again submit that the Court's own decisions illustrate that there is no sound basis for the distinctions or the results which LP&L urges.

In *Bates*, the Court found the Arizona Supreme Court to be "the ultimate body wielding the State's power over the practice of law" and thus was "acting as sovereign." 97 S.Ct. at 2697. Louisiana's constitution and statutes delegate plenary power to the Cities for the operation of their municipal electric systems. (Brief for the Petitioners at p. 3 n.2). Analogous for these purposes to the Arizona Supreme Court, the Cities are the ultimate body wielding the state's authority over the provision and regulation of electric utility services both within their boundaries and in their environs. The Cities believe that the critical factor for determining the applicability of the antitrust laws in these cases lies in finding whether the state body charged is indeed a wholly public body, like a municipality, which operates solely for the public welfare and benefit and not for private gain or in favor of private interests. Looking for "sovereignty" tends to confuse this issue. Nevertheless, *Bates* indicates, as the Cities have urged, that "sovereignty" for *Parker* v. *Brown* purposes, at least, may be found in state bodies other

than the legislature. The Cities have also noted that municipalities, as instrumentalities for the convenient administration of state government, exercise locally the sovereign power of the state (Brief for the Petitioners at pp. 13-14), and are, under any standard, entitled to dismissal of LP&L's claims.

Moreover, the *Bates* opinion supports the Cities' reading of *Cantor*, noting that "*Cantor* would have been an entirely different case if the claim had been directed against a public official or a public agency, rather than against a private party." (footnote omitted) 97 S.Ct. at 2697. The Court also noted that *Goldfarb* like *Cantor* is distinguishable from *Bates*, presumably on the ground argued by the Cities here—that *Goldfarb* like *Cantor* involved private not public action. *Id.* at 2696.

II. The Proprietary/Governmental Distinction Is An Inappropriate Standard To Determine the Applicability of the Antitrust Laws To Municipalities

From its more general arguments LP&L moves to the position that these Louisiana cities are subject to prosecution and treble damage liability when they provide the local citizenry with electric service. This conclusion is based in part upon a veiled appeal for the creation of a proprietary/governmental test to determine when municipalities may be sued. LP&L relies upon state judicial characterizations in unrelated cases to argue that each of the Cities is "engaged in private acts for private gain"[6] (Brief for Respondent at p.

[6] To make the point, LP&L quotes three times (Brief for Respondent at pp. 2 n.3, 5 and 20) from a sentence in the district court's opinion which contains a factual conclusion, unsupported by the record, that the Cities' provision of municipal electric services are business activites for profit.

4). It concludes that, by providing this particular service to local citizens, the Cities alter their governmental identity and should be treated for antitrust purposes as if they were privately owned corporations operating for profit.

As an initial response to LP&L's allegations, the Cities must dispel the notion that the municipal electric systems are operated for "profit". While the operation of an electric utility system, like other municipal activities, may produce revenues in excess of costs, these funds do not accrue to the benefit of investors as do the profits of a private corporation. Like any surplus revenues received by the municipalities, be they from the collection of traffic fines or otherwise, they go to defray the costs of other municipal services in lieu of additional taxation. Instead of charging directly for certain services municipalities could, and some do, provide utility, transportation or other services without charge, meeting the costs from general tax receipts. LP&L's "profit" rubric has no substance and cannot change the public character of these Cities for antitrust or any other purposes. In *Springfield Gas & Electric Co.* v. *Springfield,* 257 U.S. 66 (1921), this Court had occasion to review allegations similar to LP&L's, that cities in selling electricity stand like other parties engaged in commercial enterprise. The Court rejected the argument, being keenly aware of the fundamental differences between private corporations and municipal governments and recognizing as to cities that "[s]o far as gain is an object it is a gain to a public body and must be used for public ends." 257 U.S. at 70.

Importation of a proprietary/governmental standard into determinations of the scope of the federal antitrust laws is both unprecedented and unwise. Indeed,

the concept has been uniformly rejected by the circuit courts as a rationale for deciding *Parker* v. *Brown* cases. *See, e.g., City of Lafayette, Louisiana and City of Plaquemine, Louisiana* v. *Louisiana Power & Light Company,* 532 F. 2d 431, 434 n.8 (5th Cir. 1976); *New Mexico* v. *American Petrofina, Inc.,* 501 F. 2d 363, 371-372 (9th Cir. 1974); *E.W. Wiggins Airways, Inc.* v. *Massachusetts Port Authority,* 362 F. 2d 52, 55 (1st Cir.), *cert. denied,* 385 U.S. 947 (1966); *Ladue Local Lines, Inc.* v. *Bi-State Development Agency of Missouri-Illinois Metropolitan District,* 433 F. 2d 131, 135-137 (6th Cir. 1974).

The proprietary/governmental distinction originated as a judicially created concept arising from cases testing the tort liability of municipalities under state law. Although the distinction has never been addressed by this Court in an antitrust case, it has been discussed and generally criticized in other contexts. In *Trenton* v. *New Jersey,* 262 U.S. 182, 191-92 (1923), it was noted that "[t]he basis of the distinction is difficult to state, and there is no established rule for the determination of what belongs to the one or the other class." For a time the concept was used to help resolve questions of state governmental immunity from federal taxation, but this use was ultimately rejected in *New York* v. *United States,* 326 U.S. 572 (1946). There, the Court concluded that "[t]o rest the federal taxing power on what is 'normally' conducted by private enterprise in contradiction to the 'usual' governmental functions is too shifting a basis for determining constitutional power and too entangled in expediency to serve as a dependable legal criterion. The essential nature of the problem cannot be hidden by an attempt to separate manifestations of indivisible governmental powers."

326 U.S. at 580. *See also, Case* v. *Bowles,* 327 U.S. 92, 101 (1946).

This Court's strongest criticism of the proprietary/governmental distinction came in *Indian Towing Company* v. *United States,* 350 U.S. 61 (1955). There the Court refused to apply the distinction to the provisions of the Federal Tort Claims Act that made the United States liable for certain negligent or wrongful acts or omissions of government employees. The Court warned that the position taken by the government would "push the courts into the 'non-governmental'-'governmental' quagmire that has long plagued the law of municipal corporations." 350 U.S. at 65. The Court noted the "irreconcilable conflict" among state decisions on the issue, decisions which "disclose the inevitable chaos when the courts try to apply a rule of law that is inherently unsound." 350 U.S. at 65. Perhaps even more important for this case was the Court's reaffirmation in *Indian Towing* of the extreme difficulty of classifying the actions of governmental bodies.

> [A]ll Government activity is inescapably "uniquely governmental" in that it is performed by the Government. . . . "Government is not partly public or partly private, depending upon the governmental pedigree of the type of a particular activity or the manner in which the Government conducts it." *Federal Crop Insurance Corp.* v. *Merrill,* 332 U.S. 380, 383-384, 68 S. Ct. 1, 3, 92 L.Ed. 10 . . . [I]t is hard to think of any governmental activity on the "operational level," our present concern, which is "uniquely governmental," in the sense that its kind has not at one time or another been, or could not conceivably be, privately performed. 350 U.S. at 67-68.

Notwithstanding the persuasive arguments advanced against the proprietary/governmental distinction in *Indian Towing,* amici have suggested that the concept remains useful for some purposes and should be employed here. In their support, they enlist *Alfred Dunhill of London, Inc.* v. *Cuba,* 425 U.S. 682 (1976), where a minority of the Court accepted a distinction between "governmental" and "commercial" acts of a foreign nation in resolving an act of state question. At issue was the repudiation by Cuba of a trade obligation arising from cigar sales. That case, however, presented significantly different legal and policy considerations from those present here. The act of state doctrine, like the sovereign immunity of nations, was "judicially created to effectuate general notions of comity among nations and among the respective branches of the Federal government."[7] Its purpose is to preserve the Executive's control of the nation's foreign policy, respect the constitutional separation of powers and promote the resolution of disputes with foreign nations through diplomatic means.

In reaching his conclusions in *Dunhill,* Mr. Justice White relied in part upon representations of the Executive both as to Department of State policy and specifically that Cuba's actions were not to be considered an act of state. Regardless of whether the conclusions reached by Mr. Justice White would have been different had the Executive been otherwise inclined, it is apparent that *Dunhill* is not a precedent and does not provide a rational basis for application of the proprietary/governmental distinction to this case.[8]

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[7] *First National City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759, 762 (1972).

[8] Reliance by the amici upon *Bank of the United States* v. *Plant-*

A great number of municipalities in this country operate electric utility systems.[9] Many of them and countless others provide gas, water, sewer and/or transportation services as well. The task of reaching a principled decision as to whether such services are "proprietary" or "governmental" is horrific. As Mr. Justice Frankfurter noted in *Indian Towing, supra,* these are shifting sands. Services once only provided by private entities are now provided by many local governments. In other areas private firms are replacing or supplementing services offered by governmental entities. The dangers of relying on this distinction are obvious and the Court should in this respect follow the lead of the court below and decline to accept the invitation to import the proprietary/governmental distinction into this area of the law. (App. p. 56 n. 8).

III. Concepts of Fairness Do Not Require Application of the Federal Antitrust Laws to Municipalities

Promotion of the proprietary/governmental distinction is closely linked to the second component of LP&L's argument that state political subdivisions

ers' Bank of Georgia, 22 U.S. (9 Wheat.) 904 (1824) is also misplaced. There the Court held that the mere fact that the State of Georgia was one of the defendant bank's individual corporators did not cause the bank to be treated as the State for purposes of determining the jurisdiction of the federal courts under Article III or the 11th Amendment. The Court's discussion of Georgia's role as a bank corporator has no direct relevance to the applicability of a proprietary/governmental standard in this case.

[9] The Motion of Columbus and Southern Ohio Electric Company, *et al.*, for Leave to File a Brief Amicus Curiae Supporting Respondent Louisiana Power and Light Company (at p. 2) puts the number at 1,750. The Amicus Curiae Brief of National Rural Electric Cooperative Association, *et al.* (at p. 4) states that 2,000 municipalities provide electric utility services.

should be subject to antitrust prosecution when they provide electric utility services. Waving the banner of "fundamental fairness", LP&L argues that it would be unsportsmanlike to treat municipalities differently from investor-owned utilities.[10]

As the Cities illustrated in their Brief for the Petitioners, this goose/gander argument ignores the purpose of the antitrust laws as well as the fundamental differences between private business organizations and government. The different treatment of two classes of institutions under the law is neither a new nor surprising concept. The *Parker* v. *Brown* doctrine itself provides a ready example. Even under LP&L's treatment of the state action doctrine at least some "anticompetitive" acts of state government would be beyond antitrust scrutiny even though a private party would be subject to prosecution for similar acts. Certainly, under *Parker* v. *Brown* and *Bates,* if the State of Louisiana itself were sued under the Sherman Act, there would be no question that the suit should be dismissed. At the same time the State would be permitted to sue for injuries suffered as a result of antitrust violations by private parties. *Georgia* v. *Evans,* 316 U.S. 159 (1942).

Examples of distinctions between governmental and private entities may be found in many areas of federal

[10] For its authority LP&L claims that *Otter Tail Power Company* v. *United States,* 410 U.S. 366 (1973), established that "the antitrust laws would govern the competitive relationship between municipally-owned utility systems and investor-owned utility systems." (Brief for Respondent at p. 20). But, *Otter Tail* did no such thing. There the Court held merely that the Federal Power Act did not immunize privately owned electric power companies from the operation of the antitrust laws. Application of these laws to cities was never discussed.

law.[11] Indeed, some distinctions are constitutionally mandated. In *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), the Court reaffirmed that the states and their political subdivisions stand on different footing than an individual or corporation with regard to the power of Congress to regulate their activities under the commerce clause.[12] Likewise, in *Federal Crop Insurance Corporation* v. *Merrill*, 332 U.S. 380 (1947), the Court found governmental status to be a valid basis for legal distinction.

> It is too late in the day to urge that the Government is just another private litigant, for the purposes of charging it with liability, whenever it takes over a business theretofore conducted by private enterprise or engages in competition with private ventures. Government is not partly public or partly private, depending upon the governmental pedigree of the type of a particular activity or the manner in which the Government conducts it. (footnote omitted) 332 U.S. at 383-84.

In reality, LP&L's fairness argument is closely akin to the equal protection argument disposed of in *Springfield Gas & Electric Co.* v. *Springfield*, 257 U.S. 66 (1921), where the Court acknowledged the fundamen-

[11] Municipal governments do not pay federal income tax, private corporations do. The interest paid on municipal bonds is not taxed by the federal government, the interest on corporate bonds is.

[12] *Usery* supports the policy arguments offered by the Cities which suggest that the Court should not apply the antitrust laws to the subordinate entities of state government and thereby inhibit and disrupt the essential operations of city governments. (*See*, Brief for the Petitioners at pp. 20-24). The enormous effect which the treble damage judgment sought by LP&L would have on the Cities cannot be gainsaid. Neither can the chilling effect of such a judgment on the thousands of local governmental entities across the nation be underestimated.

tal differences between private and public utilities which the Cities have argued here. As Mr. Justice Holmes observed, municipalities act so that "the public welfare will be subserved" while the private corporation is "organized for private ends". 257 U.S. at 70. Contrary to LP&L's assertions, distinctions between private and public bodies are not only proper but vital to the issue in this case. The antitrust laws were intended to protect the public from abuses of private economic power, not power exercised by public agencies. *Parker* v. *Brown, supra.*

IV. The Policy Considerations Opposed To Application of the Federal Antitrust Laws To Municipal Governments Remain Valid and Compelling

LP&L and the amici make several attempts to counter the Cities' argument that the federal antitrust laws are inappropriate remedies which would disrupt the essential operations of city government. Among other things, the Cities have stressed the fundamental differences between governmental bodies and the private concerns which the antitrust laws were designed to regulate. To illustrate the differences between public and private bodies, the Cities pointed to the political process which is available to curb abuses of public power and insure that the acts of public officials are in accord with the wishes of the citizenry. In assailing these policy considerations, LP&L and the amici have focused attention upon one of the four allegations in LP&L's amended counterclaim—that Plaquemine (a municipality of about 2,550 taxpayers) imposed competitive restraints in the provision of electric service to an unasserted number of customers outside of its municipal boundaries. Their conclusion that customers

outside Plaquemine's city limits are without alternative remedy is, of course, unfounded. It ignores statewide political processes and legal remedies which may be available to aggrieved parties in state courts.[13] The absence under some circumstances of one of several remedies does not overcome the policy considerations for precluding the applicability of the antitrust laws to cities. It remains that the federal antitrust laws with their treble damage and criminal sanctions are an inappropriate means to redress transgressions by public authorities acting in an official capacity.

The Brief for the United States as Amicus Curiae recognizes the devastating effect that treble damage liability could have upon the operations of local government and the exercise of public functions by local governmental officials, and takes the position that this remedy may not be available. Nevertheless, the government takes the view that cities could be subject to injunctions and criminal sanctions. (Brief for the United States at p. 12 n. 13). But the precise legal question presented in this case is whether the Cities are subject to causes of action *and treble damage liability* under the federal antitrust laws. (*See,* Petition at p. 2). Consideration of the consequences of treble damage liability is central to this case and not premature as the government suggests. The effects of treble damage liability are an integral part of the policy considerations that must be weighed in deciding the issue in this case.

[13] The Cities have not attempted to argue and, given the procedural posture of the case, could not argue in this forum the veracity of LP&L's allegations or the propriety of the alleged conduct as a matter of state law or policy. The question is not whether the alleged conduct is for good or ill, but rather whether it is prohibited by certain specific federal statutes when done by a state political subdivision.

In responding to the Cities, LP&L and the amici have also placed reliance upon their assertions of Louisiana law and policy. Such assertions have no direct relevance to the issue here and offer nothing to contradict the strong policy considerations which oppose application of the federal antitrust laws to cities. Nevertheless, we will address these assertions to avoid the confusion they may create.

In the Brief for the Petitioners (at p. 3 n.2) the Cities referred the Court to various Louisiana constitutional and statutory provisions which establish that the Cities are political subdivisions of the State of Louisiana and have been delegated the broadest powers to own and operate municipal electric utility systems. LP&L argues, however, that La. R.S., 33:621 (one of the several statutes granting broad authority to the Cities) includes a provision that the delegated powers are subject to the restrictions imposed by "general law" and that this is evidence that the Cities are subject to the federal antitrust laws." (Brief for Respondent at pp. 16-17). Even if the term "general law" as used in the statute was intended to include the federal law, the applicability of the federal antitrust statutes could not be dictated by the state, *Asheville To-*

[14] LP&L also refers the Court to a recent Louisiana statute, Act 597 of 1975, R.S. 33:1334(G) (Brief for Respondent at p. 17), arguing this to be an expression of the State's general antitrust policy toward municipalities. This provision, part of legislation to allow municipalities and parishes to participate with each other and/or private companies in the construction and operation of electric utility facilities, was passed some time after LP&L filed its counterclaims in this case. The section cited is part of an act to allow the issuance of revenue bonds by joint utility commissions which the legislation authorizes municipalities and parishes to form and has no relevance to the municipal activities attacked by LP&L here.

bacco Board of Trade, Inc. v. *FTC*, 263 F. 2d 502 (4th Cir. 1959); *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384 (1951)."[15]

The Cities also call attention to a matter relating to Louisiana law which was raised in the "Amicus Brief of National Rural Electric Cooperative Association." The brief (at p. 14) cites a February 5, 1975 decision of the Louisiana Public Service Commission ("LPSC") in *Louisiana Power & Light Company* v. *Monroe and the City of Monroe Utilities Commission*, Order No. U-12654, Docket No. U-12654, for the proposition that Louisiana municipalities are subject to the jurisdiction of the LPSC with respect to the operation of their electric systems outside municipal boundaries. As amici have noted in a letter to the Court dated July 29, 1977, however, the LPSC decision was appealed to the 19th Judicial District Court, Parish of East Baton Rouge and reversed on September 14, 1976.

A brief discussion of the appellate court's treatment of the issue may be instructive. In *Monroe and the City of Monroe Utilities Commission* v. *Louisiana Public Service Commission, et al.*, Suit No. 177,757-Division "I" and Suit No. 181, 157-Division "I", the 19th

[15] Moreover, there is evidence that the term "general law" as used by Louisana authorities refers to public acts of the legislature in contradistinction to private acts. *See*, Louisiana Constitution, Article VI, Part V, Section 44(5); *Natchitoches* v. *State*, 221 So. 2d 534 (La. App. 3rd Cir.), *writ denied*, 254 La. 463, 223 So. 2d 870 (1969). In particular, La. R.S. 33:621 makes a municipality's operation of its utility system "subject only to restrictions imposed by general law for the protection of other communities." This indicates not only that the federal antitrust laws are not a part of the "general law" of Louisiana, but also that its meaning in La. R.S. 33:621 is merely to prohibit municipal encroachment on other governmental bodies.

Judicial District Court[16] reviewed the appropriate constitutional and statutory provisions and determined that the legislature had evidenced a "clear and consistent intention to exempt municipally owned and operated public utilities from the jurisdiction of the Commission" and that "[t]his exemption makes no distinction whatsoever as to operations within or without municipal limits." The court concluded further that:

> [T]he Legislature has unequivocally placed the operation, control and regulation of municipally owned public utilities under the exclusive jurisdiction of municipal corporations. Their purpose in so doing was obviously to insure the fiscal integrity and efficient operation of such utilities. This Court does not find any limitation of this authority to only those operations within the territorial limits of the municipality. To the contrary, the statutes extend the exclusive authority of municipal regulation to "service of the public utility within or without its corporate limits." See R.S. 33:4163."

This decision illustrates the plenary power delegated to political subdivisions in Louisiana to operate and regulate their electric utility systems and serves to confirm that they are indeed the "ultimate body wielding the State's power". *Bates* v. *State Bar of Arizona*, *supra*, at 2697.

[16] The text of the 19th Judicial District Court's Opinion is printed as Addendum A to this brief.

[17] On the basis of this ruling of the 19th Judicial District Court the LPSC on January 14, 1977 dismissed a similar proceeding brought by LP&L against the City of Plaquemine. (LPSC Order No. U-12655 in Docket No. U-12655). The text of the LPSC order is printed as Addendum B to this brief.

The Cities submit that the arguments for finding the antitrust laws inapplicable to municipalities are compelling. However, should this Court reject those arguments, there is a more suitable standard for applying antitrust law than a legislative mandate test (be it that of the court below or the even more burdensome test proposed by LP&L and the government). The disruptive effect such a test would have upon the operation of state and local government [18] calls for adoption of a standard more compatible with this nation's federalist structure. If subordinate governmental bodies are ever to be subject to antitrust prosecution, it should be only when they act completely beyond the scope of their general authority. Such a standard, equivalent to the traditional *ultra vires* test, would not look to legislative contemplation or approval of specific acts, but merely to the existence of general operational authority. For example, if a city is authorized to run an electric system or a transportation system, the manner in which it runs the system is not *ultra vires,* and its conduct in engaging in that activity should be beyond the reach of the antitrust laws even though it might be subject to attack on some other ground. This approach would preserve in the states a greater freedom to order their affairs according to local choice, and reduce somewhat the disruptive effects of such a decision upon state and local government.

CONCLUSION

None of the responsive briefs provide any workable solutions to the host of difficulties that would be created by application of the antitrust laws to municipalities, or effectively respond to the policy considerations that

[18] *See*, Brief for the Petitioners at pp. 15-20.

argue against such application. (*See,* Brief for the Petitioners at pp. 15-24). It is indeed impossible to apply the antitrust laws to cities without treading to some degree upon concepts of federalism and interfering with the exercise of local political judgment. It is evident that LP&L and the government are asking this Court to legislate a series of standards for the application of the antitrust laws in ways which Congress certainly never articulated and, the Cities submit, never intended. If the provision of electric and other services by municipalities truly poses a significant threat to our free enterprise economy, appropriate standards and remedies are for the Congress to formulate. Until such time as Congress determines to expand the scope of its legislation, this Court should not reach a decision that would invite substantial additional litigation and enlarge the purview of these punitive statutes to include the actions of municipal governments. Absent an express intention by Congress to include cities under the Sherman Act any policy which interferes with local government and intrudes on fundamental concepts of federalism should not be imputed to the legislative branch.

For these reasons, the Judgment of the United States Court of Appeals for the Fifth Circuit should be Reversed.

Respectfully submitted,

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Dated: September 14, 1977.

ADDENDUM

ADDENDUM A

Suit Number 177,757—Division "I"

19th Judicial District Court

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

THE CITY OF MONROE AND
THE CITY OF MONROE UTILITIES COMMISSION

VERSUS

LOUISIANA PUBLIC SERVICE COMMISSION, ET AL

Consolidated With

Suit Number 181,157—Division "I"

19th Judicial District Court

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

THE CITY OF MONROE AND
THE CITY OF MONROE UTILITIES COMMISSION

VERSUS

LOUISIANA PUBLIC SERVICE COMMISSION

Written Reasons for Judgment

These consolidated cases arise from proceedings before the Louisiana Public Service Commission (the Commission) and pursuant to Section 1192 of Title 45 of the Louisiana Revised Statutes of 1950.

The facts surrounding these cases may be briefly stated as follows.

FACTS

Louisiana Power and Light Company (LPandL) is a privately owned public utility corporation operating under

a franchise outside the city limits of the City of Monroe (Monroe) in the geographical area concerned as well as elsewhere in Louisiana. Monroe is a municipal corporation owning and operating electric light and power and water systems under the auspices of the City of Monroe Utilities Commission (Utilities). Utilities has at all times pertinent to these proceedings engaged in the business of generating, transmitting, distributing and selling electric power and energy and water, both within and without the territorial limits of Monroe.

The factual controversy involved centers around Monroe supplying electricity to a certain industrial park known as Millhaven, located approximately one mile east of the southeastern city limits of Monroe, as well as several other industrial plants and residential customers located outside the territorial limits of Monroe.

Louisiana Power and Light Company initiated these proceedings by filing a petition and rule to show cause with the Commission, alleging that Monroe and Utilities threatened prospective customers in the aforementioned areas with the denial of certain utility services (including water, gas and sewerage) for the purpose of enticing such customers to subscribe to electric service from Utilities. LPandL further alleged that Monroe and Utilities were in violation of LSA-R.S. 45:123, and two general directive orders of the Commission entitled, "In re: Duplication of Electrical Service," and "In re: Promotional Practices." The subject customers were located within three hundred feet of existing facilities of LPandL. This proceeding bears number U-12654 on the docket of the Commission.

In the proceedings before the Commission, Monroe and Utilities filed an exception to the jurisdiction of the Commission as well as an exception of no cause of action. Exceptors averred that the Commission had no jurisdiction over operations of municipally owned and operated public utilities such as they were operating. Exceptors further

claimed that LSA-R.S. 45:123, as well as the general orders of the Commission referred to in the petition and rule to show cause, had no application to their operations.

The Commission overruled the exceptions and, after consideration of the evidence presented at the hearing on the merits, specifically ruled that it had jurisdiction over Monroe and Utilities insofar as their operations outside the territorial limits of Monroe. However, the Commission refused to grant the relief requested by LPandL.

During the pendency of the above proceedings before the Commission in Number U-12654, Monroe and Utilities initiated the above-captioned proceedings numbered 177,757 by filing a petition for injunctive relief prohibiting the Commission from asserting jurisdiction over Monroe and Utilities in the proceedings initiated by LPandL. LPandL intervened and filed exceptions of no cause of action, no right of action and prematurity.

This Court sustained the exception of no cause of action after finding no irreparable injury would result from allowing the proceeding before the Commission to continue. Accordingly, the petition for injunctive relief was dismissed.

Subsequent to the Commission rendering its decision, LPandL filed a petition for appeal and judicial review in the above-captioned proceedings numbered 177,757, seeking a reversal of the Commission's order to the extent that it refused to order Monroe and Utilities to halt construction of their facilities and to cease and desist from serving electricity to the commercial customers in Millhaven. Monroe and Utilities intervened in that proceeding, asking that that part of the Commission's order which LPandL seeks to have reversed be upheld.

In addition to the above intervention, Monroe and Utilities filed the above-captioned matter, numbered 181,157, as an appeal from the Commission's order wherein it held that the Commission had jurisdiction over the City and

Utilities in operating a public utility outside the territorial limits of the City of Monroe.

Due to the common issues of law and fact, the appeals by LPandL and Monroe and Utilities have been consolidated.

In addition to the actual parties to these proceedings, amici curiae briefs have been filed by the Association of Louisiana Electric Cooperatives, Inc., Southwest Louisiana Electric Membership Corporation, the City of Lafayette, and the Municipalities of Houma, Lake Providence, Rayville and Ruston.

Law

There are two basic legal issues presented for this Court's determination. Initially, the Court has been asked to determine whether the Commission had jurisdiction over the subject matter and parties to the proceedings instituted by LPandL. More specifically, can the Commission validly assert its jurisdiction over the operations of a municipally owned utility system to the extent said operations transcend the corporate limits of the municipality. In addition, the Court has been asked to review the Commission's order insofar as it sustains Monroe's and Utilities' continued provision of electrical service through their facilities. Orderly procedure requires that the issue of jurisdiction be considered first.

Article 6, Section 4, of the 1921 Constitution outlines the powers of the Commission as follows:

> "§ 4. Public Service Commission; powers
>
> [Section 4.] The Commission shall have and exercise all necessary power and authority to supervise, govern, regulate and control all common carrier railroads, street railroads, interurban railroads, steamboats and other water craft, sleeping car, express, telephone, telegraph, gas, electric light, heat and power, water works, common carrier pipelines, canals (except irrigation

> canals) and other public utilities in the State of Louisiana, and to fix reasonable and just single and joint line rates, fares, tolls or charges for the commodities furnished, or services rendered by such common carriers or public utilities, *except as herein otherwise provided;* . . .
>
> "The power, authority, and duties of the Commission shall affect and include all matters and things connected with, concerning, and growing out of the service to be given or rendered by the common carriers and public utilities hereby, or which may hereafter be made subject to supervision, regulation and control by the Commission, . . . The right of the Legislature to place other public utilities under the control of and confer other powers upon the Louisiana Public Service Commission respecting common carriers and public utilities is hereby declared to be unlimited by any provision of this Constitution." (Emphasis added.)

This authority is carried over in the Louisiana Constitution of 1974 in Article 4, Section 21(b), as follows:

> "(B) Powers and Duties. The commission shall regulate all common carriers and public utilities and have such other regulatory authority *as provided by law.* It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties *as provided by law.*" (Emphasis added.)

Initially, it must be noted that the above provisions contemplate exceptions to the broad and general powers granted to the Commission. These exceptions will be fully discussed later.

The general powers of the Commission are further set forth in LSA-R.S. 45:1161, et seq. In defining a "public utility" as contemplated therein, Section 1161 provides the following:

"(1) 'Public utility' means any person, public or private, subject to the general jurisdiction of the commission *but not including* carriers by rail, water, electric or motor vehicles or pipe lines, or *public utilities municipally owned or operated* or electric properties owned or operated by rural cooperatives." (Emphasis added.)[1]

The Commission is empowered to exercise its authority with regard to rates and service as set forth in R.S. 45:1163:

"§ 1163. Power to regulate rates and service

The commission shall exercise all necessary power and authority over any street railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of fixing and regulating the rates charged or to be charged by and service furnished by such public utilities; provided, however, that no aspect of direct sales of natural gas by natural gas producers, natural gas pipeline companies, natural gas distribution companies or any other person engaging in the direct sale of natural gas to industrial users for fuel or for utilization in any manufacturing process, shall be subject to such regulation by the commission."

In defining the extent of the Commission's power, R.S. 45:1164 pertinently provides:

"§ 1164. Extent of power as to service; exception

The power, authority, and duties of the commission shall affect and include all matters and things connected with, concerning, and growing out of the service to be given or rendered by such public utilities.

[1] This definition was amended during the 1975 Regular Session of the Legislature by Act 328 to conform with Article 4, Section 21(C) of the 1974 Constitution. The amendment need not be considered for purposes of this discussion.

The provisions of this Section and R.S. 45:1163 shall not apply to any public utility, the title to which is in the state or any of its political subdivisions or municipalities." (Emphasis added.)[2]

Section 123 of Title 45 of the Louisiana Revised Statutes, as amended, regulates the duplication of electrical services. It provides, in pertinent part:

"The provisions of this section shall not apply to municipally owned or operated utilities of the State of Louisiana or to the parish of Orleans."

As can be gleaned from the above provisions, the Legislature has evidenced a clear and consistent intention to exempt municipally owned and operated public utilities from the jurisdiction of the Commission. This exemption makes no distinction whatsoever as to operations within or without municipal limits.

The power of the City of Monroe to regulate utilities, prior to the effective date of the Louisiana Constitution of 1921, is expressly noted in the original City of Monroe Charter, as amended:

"SEVENTH—To provide an adequate water supply and to erect, purchase, maintain and operate water works and electric and gas light plants, and to regulate the same, and prescribe rates at which water and gas and electric lights shall be supplied to the inhabitants and, also, to construct, own, operate and maintain within and without the City, and within or without the parish of Ouachita, electric street railways and to carry thereon freight and passengers; and to supply electric power to private individuals or corporations for any purpose and to fix the charges therefor."

[2] This definition was amended during the 1975 Regular Session of the Legislature by Act 328 to conform with Article 4, Section 21(C) of the 1974 Constitution. The amendment need not be considered for purposes of this discussion.

Thus, by virtue of its charter, the City of Monroe enjoyed the power to maintain and operate utilities within and without its corporate limits prior to 1921.

The Constitution of 1921, in Article 6, Section 7, with respect to the above municipal authority, provides the following:

> "§ 7. Public service commission; local regulation of utilities; retention or surrender
>
> Section 7. *Nothing in this article shall affect the powers of supervision, regulation and control over any street railway, gas, electric light, heat, power, water works or other local public utility, now vested in any town, city, or parish government* unless and until at an election to be held pursuant to laws to be hereafter passed by the Legislature, a majority of the qualified electors of such town, city, or parish, voting thereon, shall vote to surrender such powers. In the event of such surrender such powers shall immediately vest in the Louisiana Public Service Commission; provided, that where any town, city, or parish shall have surrendered as above provided, any of its powers of supervision, regulation and control respecting public utilities, it may in the same manner, by a like vote, reinvest itself with such powers." (Emphasis added.)

Thus, the Commission's jurisdiction is expressly limited by the Constitution, itself.

Again, this constitutional limitation of the Commission's regulatory power over municipally owned public utilities is recognized and carried over in Article 4, Section 21(C) of the 1974 Constitution:

> "(C) Limitation. *The commission shall have no power to regulate any* common carrier or *public utility owned, operated, or regulated on the effective date of*

> *this constitution by the governing authority of one or more political subdivisions* except by the approval of a majority of the electors voting in an election held for that purpose; however, a political subdivision may reinvest itself with such regulatory power in the manner in which it was surrendered. This Paragraph shall not apply to safety regulations pertaining to the operation of such utilities." (Emphasis added.)

Admittedly there has been no election divesting Monroe's authority to regulate its public utilities.

Furthermore, Article 14, Section 14(m) of the 1921 Constitution authorizes the issuance of bonds by municipalities for the construction and operation of revenue producing public utilities. This provision pertinently provides, in part, the following:

> "The Legislature shall also provide that when bonds are issued hereunder, the issuing subdivision or district must impose rates for the services rendered by the utility fully sufficient to operate and maintain the utility, to pay principal of and interest on the bonds, and to provide an adequate fund for depreciation, improvements and extensions, and provisions may be made for encumbering two or more utilities for the construction, acquisition, extension or improvement of any one or more of the utilities encumbered."

The above provision was continued in the new State Constitution in Article 6, Section 37:

> § 37. Revenue-Producing Property
>
> Section 37.(A) Authorization. The legislature by law may authorize political subdivisions to issue bonds or other debt obligations to construct, acquire, extend, or improve any revenue-producing public utility or work of public improvement. The bonds or other debt obligations may be secured by mortgage on the lands,

buildings, machinery, and equipment or by the pledge of the income and revenues of the public utility or work of public improvement. They shall not be a charge upon the other income and revenues of the political subdivision.

"(B) Exception. This Section shall not apply to a school board."

The Legislature implemented the above authority in R.S. 33:4161, et seq. In connection with this implementation, the following statutory provisions are specifically noted:

"§ 4251. Bond issue

Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14, Article 14, of the Constitution of Louisiana, all of which are hereinafter in this Sub-part referred to as 'municipal corporation' or 'municipality' may, in order to construct, acquire, or improve a revenue producing public utility, *either within or without its boundaries,* obtain funds for the purpose by issuing revenue bonds. For the purposes of this Sub-part, the governing body of the municipal corporation shall be the body empowered to authorize and issue other bonds of the municipal corporation under the provisions of Section 14, Article 14, of the Constitution of Louisiana and Title 39, Sub-title 2, Chapter 4." (Emphasis added.)

"§ 4256. Charges for commodities or services provided by utility

When any municipality has issued bonds and has pledged the revenues of any utility for the payment thereof as herein provided, *the municipality shall impose and collect fees and charges for the products, commodities and services furnished by the utility,* including those furnished to the municipality itself and its

various agencies and departments, in such amounts and at such rates as shall be fully sufficient at all times to (1) pay the expenses of operating and maintaining the utility, (2) provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds as each falls due, (3) provide such reasonable fund for contingencies as may be required by the resolution authorizing the bonds, and (4) provide an adequate depreciation fund for repairs, extensions and improvements to the utility necessary to assure adequate and efficient service to the public. *No board or commission other than the governing body of the municipality shall have authority to fix or supervise the making of these fees and charges."* (Emphasis added.)

"§ 4281. Extension or improvement of municipally owned utility by city of 25,000 to 250,000

Any municipality having a population in excess of twenty-five thousand and less than two hundred fifty thousand owning and operating its electric power plant, waterworks, motor coach transportation, and sewerage system, may construct, maintain, extend, rehabilitate, enlarge or improve any municipally owned public utility *either within or without its boundaries.* In addition the municipality may consolidate and unite any non-revenue bearing utility with one or more revenue bearing public utilities, which, when so united and consolidated, shall be one unit and shall be considered and treated as a single revenue bearing utility." (Emphasis added.)

"§ 4287. Charges for commodities or services provided by utility

When any municipal corporation has issued certificates of indebtedness hereunder and has pledged the revenues of any utility for the payment thereof, the

municipality shall impose and collect fees and charges for the products, commodities, and services performed by the utility, in amounts and at rates fully sufficient at all times to

(1) pay the expenses of operating and maintaining the utility;

(2) provide a sinking fund sufficient to insure the prompt payment of the certificates of indebtedness and interest thereon as they fall due;

(3) provide such reasonable funds for contingencies as may be required; and

(4) provide an adequate depreciation fund for repairs, extensions, and improvements to the utility necessary to insure adequate and sufficient service to the public. There shall be no charge for services to the municipality itself or to its agencies and departments. *The governing authority of the municipality or any duly appointed or qualified receiver shall have the exclusive authority to fix or supervise the making of these fees and charges.*" (Emphasis added.)

"§ 4161. Revenue producing public utility defined

For the purposes of this Part, 'revenue producing public utility' means any revenue producing business or organization which regularly supplies the public with a commodity or service, including electricity, gas, water, ice, ferries, warehouses, docks, wharves, terminals, airports, transportation, telephone, telegraph, radio, television, drainage, sewerage, garbage disposal, and other like services; or any project or undertaking, including public lands and improvements thereon, owned and operated by a municipal corporation or parish or other political subdivision or taxing district authorized to issue bonds under authority of Section XIV of Article 14 of the Constitution of Louisiana of

1921, from the conduct and operation of which revenue can be derived."

"§ 4162. Power to own and operate; power to lease

Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14 of Article 14 of the Constitution of Louisiana of 1921, may construct, acquire, extend or improve any revenue producing public utility and property necessary thereto, *either within or without its boundaries, and may operate and maintain the utility in the interest of the public.*

A municipal corporation may lease waterworks systems, electric light and power plants, combined water and electric systems, garbage plants, sewerage works, electric street and interurban railways, gas plants and distributing systems.

No municipal corporation may lease or purchase gas fields, wells, lands, or holdings for the purpose of drilling and operating gas wells.

A parish may lease gas plants, gas distributing systems, gas wells, gas lands and holdings." (Emphasis added.)

"§ 4163. Sale and distribution of commodity or service; establishment or rates and regulations

The municipal corporation, parish, political subdivision, or taxing district may sell and distribute the commodity or service of the public utility within or without its corporate limits and may establish rates, rules and regulations with respect to the sale and distribution." (Emphasis added.)

As can be gleaned from the above constitutional and statutory authorities, the Legislature has unequivocally placed the operation, control and regulation of municipally

owned public utilities under the exclusive jurisdiction of municipal corporations. Their purpose in so doing was obviously to insure the fiscal integrity and efficient operation of such utilities. This Court does not find any limitation of this authority to only those operations within the territorial limits of the municipality. To the contrary, the statutes extend the exclusive authority of municipal regulation to "service of the public utility within or without its corporate limits." See R.S. 33:4163 (quoted supra).

In light of the express language contained in the above authorities of both statutory and constitutional origin, this Court has no alternative but to hold that it was, and is, the clear and unequivocal intent of our lawmakers to exclude from the jurisdiction of the Commission operations of a municipally owned public utility, whether said operations are conducted within or without the municipal limits. A decision to the contrary would be tantamount to a judicial usurpation of the legislative function and a violation of the theory of separation of powers.

In support of its position that the Commission does have jurisdiction, LPandL argues that a determination of jurisdiction by the Commission should be afforded great weight.

This Court is cognizant of the above principle. However, the Court also notes that in the fifty-three years of its existence, the Commission has never before seen fit to attempt to regulate municipalities in the operation of their municipally owned revenue producing utilities. In fact, the Commission has declined to afford non-resident customers relief on the very basis that it lacked jurisdiction. See *Town of St. Francisville* v. *Cobb,* 188 So.2d 46 (La. App. 4th Cir. 1966) Rehearing Denied. Thus, in finding that the Commission lacks jurisdiction in the case at bar, this Court is persuaded by the Commission's own interpretation of the laws it administers. See *Williams* v. *New Orleans S.S. Association,* 341 F.Supp. 613 (La. Dist. ED. 1972).

LPandL further avers that a holding against the Commission on the issue of jurisdiction will result in the denial of equal protection and due process under both State and Federal Constitutions. This argument is without merit. See *Springfield Gas and Electric Company* v. *City of Springfield,* 257 U.S, 66, 42 S.Ct. 24 (1921).

Finally, LPandL cites numerous cases (some of which are foreign to this jurisdiction) that allegedly support a finding of jurisdiction on behalf of the Commission. The Court has reviewed these cases and concludes that they are adverse or inapposite to the circumstances presented herein. Rather, the Court is of the opinion that its finding of exclusive jurisdiction on behalf of the City of Monroe is supported by the weight of the jurisprudence. See *City of Plaquemine* v. *Louisiana Public Service Commission,* 282 So.2d 440 (1972); *Greater Livingston Water Company* v. *Louisiana Public Service Commission,* 246 La. 273, 164 So.2d 325 (1964); *Hicks* v. *City of Monroe Utilities Commission,* 237 La. 848, 112 So.2d 635 (1959); and *Town of St. Francisville* v. *Cobb,* (Supra).

In summary, the Court concludes that the Louisiana Public Service Commission is without jurisdiction over the operations of the Monroe Utilities Commission, a municipally owned public utility, whether such operations are within or without the territorial limits of the City of Monroe. This determination against the Commission on the issue of jurisdiction pretermits judicial review of the findings of the Commission on the merits.

For the above and foregoing reasons, judgment shall be rendered in Suit Number 177,757, entitled *The City of Monroe and The City of Monroe Utilities Commission* v. *Louisiana Public Service Commission, et al,* dismissing petition of Louisiana Power and Light Company at its costs.

Judgment shall further be rendered in Suit Number 181,517, entitled *The City of Monroe and The City of Monroe Utilities Commission* v. *Louisiana Public Service Commission,* in favor of plaintiffs and against defendants,

reversing the Commission's Order Number U-12654 on the basis that the Commission lacks jurisdiction over the operations of the Monroe Utilities Company.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 14th day of September, 1976.

/s/ Eugene W. McGehee

Eugene W. McGehee, *Judge*

Division "I"

Filed Sept. 14, 1976

ADDENDUM B

Louisiana Public Service Commission

Order No. U-12655

Louisiana Power and Light Company

vs.

The City of Plaquemine

Docket No. U-12655

In re: Alleged duplication of electric service and violation of General Order of this Commission dated March 12, 1974, entitled "Promotional Practices" by the Plaquemine Light and Water System in areas immediately south of Plaquemine, Iberville Parish, Louisiana.

In this proceeding, Louisiana Power and Light Company alleges that the City of Plaquemine engages in the sale of electricity inside and outside of the city limits of Plaquemine and that the city discriminates among its customers outside the city limits by denial of utility service, specifically water, gas and sewerage, in order to persuade them to take electric service from the city. Louisiana Power and Light further alleges that the City of Plaquemine has violated the provisions of LRS 45:123 by repeatedly extending facilities to furnish service within 300 feet of Louisiana Power and Light lines.

The Commission is mindful of the judgement of the 19th Judicial District Court, Parish of East Baton Rouge, in its judgement number 177,757, The City of Monroe and The City of Monroe Utilities Commission versus Louisiana Public Service Commission, et al, and judgement number 181,157, The City of Monroe and The City of Monroe Utilities Commission versus Louisiana Public Service Commission. The Court concluded in its judgement that the Louisi-

ana Public Service Commission is without jurisdiction over the operations of the Monroe Utilities Commission, a municipally owned public utility, whether such operations are within or without the territorial limits of the City of Monroe. It appearing that this Commission is without authority to adjudicate this complaint, this matter is

ORDERED dismissed.

BY ORDER OF THE COMMISSION

BATON ROUGE, LOUISIANA

January 14, 1977